

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

GARY BRICE MCBAY

PLAINTIFF

V.

CIVIL ACTION NO. 1:07CV1205-LG-RHW

HARRISON COUNTY, MISSISSIPPI BY AND
THROUGH ITS BOARD OF SUPERVISORS;
HARRISON COUNTY SHERIFF GEORGE PAYNE;
WAYNE PAYNE; DIANE GATSON RILEY;
STEVE CAMPBELL; RICK GATSON; RYAN TEEL;
MORGAN THOMPSON; JOHN DOES 1-4;
AMERICAN CORRECTIONAL ASSOCIATION;
JAMES A GONDLES, JR.; UNKNOWN DEFENDANTS
1-3 EMPLOYEES OF AMERICAN CORRECTIONAL
ASSOCIATION; HEALTH ASSURANCE LLC AND
UNKNOWN DEFENDANTS 1-2 EMPLOYEES OF
AMERICAN CORRECTIONAL ASSOCIATION

DEFENDANTS

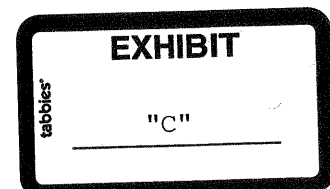
STATE OF MISSISSIPPI

COUNTY OF HARRISON

AFFIDAVIT OF KENNETH ALLEN

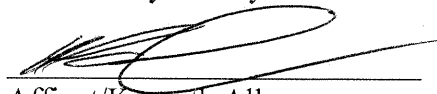
PERSONALLY CAME AND APPEARED BEFORE ME the undersigned authority in and
for the County and State aforesaid, the within named, KENNETH ALLEN, who, after first being
duly sworn by me on his oath, did depose and state the following:

1. My name is KENNETH ALLEN, and I am over the age of twenty-one (21) years.
I have personal knowledge of the matters and facts contained in this Affidavit and I
am competent to testify to the matters stated herein.
2. At the time of this alleged incident I held the position of patrol officer for the




Harrison County Sheriff's Department.

3. I have attached hereto as **Exhibit "1"** a true and correct copy of my Arrest Report, Offense Form including Narrative of offense prepared on or about November 6, 2005. This document was routinely prepared in the course and scope of my duties as a patrol officer for the Harrison County Sheriff's Department and it was prepared immediately following my transport of McBay to the Harrison County Adult Detention Center after his arrest at Choppers Lounge on November 6, 2005. Exhibit "1" fairly and accurately represents my contemporaneous observations of the events which took place during my arrest of Gary McBay on November 6, 2005.


Affiant/Kenneth Allen
Harrison County, Mississippi

Sworn to and subscribed before me on this the 20th day of October, 2009.


Notary Public

My Commission Expires:

Sept. 18, 2012

(SEAL)



HARRISON COUNTY SHERIFF'S DEPARTMENT
UNIFORM ARREST / BOOKING FORM

HCSD FILE # _____

☐ JUVENILE INVOLVED

| | | | | | | | | | | | |
|--|--|--|--|--|--|---------------------------|--|---|--------------|--|--|
| NAME (LAST, FIRST, MIDDLE) MCBAY, GARY BRICE | | | | ALIAS OR NICKNAME (LAST, FIRST, MIDDLE, ECT) N/A | | | | CASE NUMBER 05-21728 | | | |
| ADDRESS 1109 SILVERCREEK | | | | CITY DE SOTO | | STATE TX | | ZIP CODE 75115 | | HOME PHONE NUMBER N/A | |
| OCCUPATION / EMPLOYER UNEMPLOYED | | | | CITY N/A | | STATE N/A | | ZIP CODE N/A | | WORK PHONE NUMBER N/A | |
| AGE 29 | | DATE OF BIRTH 08-05-76 | | SOCIAL SECURITY NUMBER 458-95-4595 | | | | DRIVERS LICENSE NUMBER 16889131 | | STATE TX | |
| SEX M | | RACE W | | HEIGHT 506 | | WEIGHT 150 | | HAIR BLONDE | | EYES BLUE | |
| | | | | | | | | HISPANIC NO | | PLACE OF BIRTH (CITY, STATE) DALLAS, TX | |
| <input type="checkbox"/> SCARS <input type="checkbox"/> MARKS <input type="checkbox"/> TATTOOS <input type="checkbox"/> AMPUTATIONS NONE | | | | | | | | | | | |
| FBI NUMBER | | | | OTHER ALIAS INFORMATION | | | | | | | |
| EMERGENCY CONTACT NONE | | | | RELATIONSHIP | | HOME PHONE | | WORK PHONE | | ADDRESS | |
| HOW ARREST WAS MADE ON CALL <input checked="" type="checkbox"/> ON VIEW <input type="checkbox"/> ON WARRANT <input type="checkbox"/> | | | | | | JUDGE | | | WARRANT DATE | | |
| CHARGE FEL <input type="checkbox"/> MISD <input checked="" type="checkbox"/> PUBLIC DRUNK | | | | OFFENSE DATE 11-06-05 | | CASE # 05-21728 | | CAUSE # | | BOND AMOUNT \$ 500.00 | |
| DISPOSITION OF CHARGE | | | | | | | | MISD COURT DATE 12-14-05 | | COURT / DISTRICT 1ST JUSTICE | |
| CHARGE FEL <input type="checkbox"/> MISD <input type="checkbox"/> | | | | OFFENSE DATE | | CASE # | | CAUSE # | | BOND AMOUNT \$ | |
| DISPOSITION OF CHARGE | | | | | | | | MISD COURT DATE | | COURT / DISTRICT | |
| CHARGE FEL <input type="checkbox"/> MISD <input type="checkbox"/> | | | | OFFENSE DATE | | CASE # | | CAUSE # | | BOND AMOUNT \$ | |
| DISPOSITION OF CHARGE | | | | | | | | MISD COURT DATE | | COURT / DISTRICT | |
| CHARGE FEL <input type="checkbox"/> MISD <input type="checkbox"/> | | | | OFFENSE DATE | | CASE # | | CAUSE # | | BOND AMOUNT \$ | |
| DISPOSITION OF CHARGE | | | | | | | | MISD COURT DATE | | COURT / DISTRICT | |
| CAPIAS-FINE \$ CASH ONLY \$ N/A | | | | TOTAL MISD BOND \$ 500.00 | | | | TOTAL FELONY BOND \$ N/A | | | |
| | | | | | | | | TOTAL BOND \$ 500.00 | | | |
| ARRESTING AGENCY (NAME) Harrison County Sheriff's Department | | | | | | ORI MS0240000 | | | | | |
| DATE OF ARREST 11-06-05 | | | | TIME 1953 HOURS | | | | LOCATION OF ARREST 18009 TILLMAN RD. GULFPORT, MS 39503 | | | |
| ARRESTING OFFICER (# & NAME) # 75 N. ALLEN | | | | ASSISTING OFFICER (# & NAME) # 93 R. BORJA | | | | INVESTIGATOR HANDLING CASE | | | |
| DETENTION DATE / TIME | | OFFICER (# & NAME) | | CELL | | PROPERTY | | PHONE CALL MADE (YES/NO) | | | |
| DOCKET | | FACILITY ADULT DETENTION <input type="checkbox"/> JUVENILE DETENTION <input type="checkbox"/> SHELTER <input type="checkbox"/> OTHER <input type="checkbox"/> | | | | | | PICTURE YES <input type="checkbox"/> NO <input type="checkbox"/> | | FINGERPRINTS YES <input type="checkbox"/> NO <input type="checkbox"/> | |
| NCIC INQUIRY NEGATIVE <input type="checkbox"/> POSITIVE <input type="checkbox"/> | | NIC# | | CHARGE | | | | AGENCY | | | |
| RELEASE DATE / TIME | | OFFICER (& NAME) | | RELEASE STATUS (BOND, TIME SERVED, ECT) | | | | SHERIFF'S RECEIPT NUMBER | | | |
| NCIC INQUIRY NEGATIVE <input type="checkbox"/> POSITIVE <input type="checkbox"/> | | NIC# | | CHARGE | | | | AGENCY | | | |

| | | | | | | | |
|---|--|-------------------------------|-------------------------|--|----------------------|--|---|
| <input type="checkbox"/> JUVENILE INVOLVED | | OFFENSE FORM I | | | | INCIDENT NUMBER | |
| OFFENSE | 1. Type Offense PUBLIC DRUNK | | | 2. Code 2301 | | 3. Type Offense | |
| | 5. Date Offense Reported 11-06-05 | | | 7. Time Offense Reported 1929 HOURS | | 4. Code | |
| | 8. Location of Offense (Street Address) 18009 TILLMAN RD. GULFPORT, MS 39503 | | | 10. Grid N/A | | 11. Patrol Area S. WEST | |
| | 9. Firm Name (If Commercial) CHOPPERS LOUNGE | | | 12. Shift MIDNIGHT | | 5. Offense Occurred Earliest Date: 11-06-05 Latest Date: 11-06-05 | |
| VICTIM & WITNESSES | 14. Victim's Name (Last, First, Middle) | | | 15. Residence Address | | | 16. Res. Phone |
| | 17. Victim DOB | 18. Sex | 19. Race | 20. Employer/School | | 21. Business/School Address | |
| | 23. <input type="checkbox"/> V <input checked="" type="checkbox"/> RP <input type="checkbox"/> W <input type="checkbox"/> P | | | 24. Name (Last, First, Middle) RANDAZZO, THOMAS SSN 427-43-5221 | | 25. Residence Address 1906 46TH AVE. GULFPORT, MS 39501 | |
| | 27. DOB 05-06-67 | | | 28. Sex M | 29. Race W | 30. Employer/School CHOPPERS LOUNGE | |
| PROPERTY | 33. <input type="checkbox"/> V <input checked="" type="checkbox"/> RP <input type="checkbox"/> W <input type="checkbox"/> P | | | 34. Name (Last, First, Middle) ALLEN, KENNETH N. | | 35. Residence Address ON FILE | |
| | 37. DOB ON FILE | | | 38. Sex M | 39. Race W | 40. Employer/School HARRISON CO. SHERIFF DEPT. | |
| | 43. Victim/Suspect Relationship <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 Stranger <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 Acquaintance <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 Relative | | | | | <input checked="" type="checkbox"/> Alcohol Related <input type="checkbox"/> Drug Related | |
| | 45. Status- <input type="checkbox"/> E <input type="checkbox"/> S <input type="checkbox"/> R <input type="checkbox"/> D | | | 46. Qty | | 47. Article | |
| VEHICLE | 48. Brand, Make or Manufacturer | | | 49. Model Name and Number | | 50. Description (Color/Size) | |
| | 49. Model Name and Number | | | 50. Description (Color/Size) | | 51. Serial No. And/Or Owner Applied No. | |
| | 51. Serial No. And/Or Owner Applied No. | | | 52. Value | | | |
| | 52. Value | | | | | | |
| NARRATIVE | VEHICLE <input type="checkbox"/> E <input type="checkbox"/> S <input type="checkbox"/> R <input type="checkbox"/> D | | | 53. License No. | | 54. State | |
| | 55. Veh. Yr. | | | 56. Make/Style | | 57. Model | |
| | 58. Color/Color | | | 59. Value | | | |
| | 60. VIN Number | | | 61. Vehicle Marks/ Damage/ Decals/Comments | | | |
| 62. Narrative of Offense (Attach Additional Narrative If Needed) ON 11-06-05 DEPUTY ALLEN RESPONDED TO CHOPPER LOUNGE IN REFERENCE A DRUNK AND DISORDERLY COMPLAINT. UPON ARRIVAL DEPUTY ALLEN SPOKE TO THOMAS RANDAZZO WHO STATED THAT A WHITE MALE, LATER IDENTIFIED AS GARY MCBAY, WAS DISTURBING THE BUSINESS AND ASKED TO LEAVE. MR RANDAZZO SAID THAT HE WATCHED AS MR. MCBAY WAS LEAVING AND NOTICED HIM FALLING OVER AND HITTING OTHER VEHICLES. MR. RANDAZZO TOLD MR. MCBAY THAT HE DID NOT NEED TO BE DRIVING AND TO WAIT FOR THEM TO CALL HIM A TAXI. MR. RANDAZZO STATED THAT MR. MCBAY THEN ATTEMPTED TO ASSAULT HIM. MR. RANDAZZO THEN GRABBED MR. MCBAY AND HELD HIM DOWN UNTIL THE SHERIFF'S DEPT ARRIVED. DEPUTY ALLEN OBSERVED MR. RANDAZZO SITTING ON TOP OF MR. MCBAY AND NOTICED THAT MR MCBAY HAD A BLOODY NOSE. AMR RESPONDED AND MR. MCBAY REFUSED ANY TREATMENT. DEPUTY ALLEN THEN PLACED MR. MCBAY INTO CUSTODY AND TRANSPORTED HIM TO THE JAIL. MR. MCBAY WAS CHARGED WITH PUBLIC DRUNK. | | | | | | | |
| 63. Evidence Disposition (Location) | | | | 63A. Complainant/Victim Signature: | | | |
| MOI | 64. MOI (Reverse Side) | | CODE | 7. Weapon Type | | CODE | 65. OFFENSE STATUS |
| | 1. Type of Premise | | F | 8. Use of Weapon | | - | OPEN <input type="checkbox"/> 60 Suspended Inactive <input type="checkbox"/> 63 Patrol Follow-Up <input type="checkbox"/> 66 Detective Follow-Up Signed Affidavit <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Will Sign Later |
| | 2. Object of Attack | | - | 9. Method of Departure | | C | CLOSED <input checked="" type="checkbox"/> 10 Cleared Adult Arrest <input type="checkbox"/> 20 Cleared Exceptional Adt. <input type="checkbox"/> 30 Cleared Juvenile Custody <input type="checkbox"/> 40 Cleared Exceptional Juv. <input type="checkbox"/> 50 Other Cleared Exception <input type="checkbox"/> 70 Unfounded |
| | 3. Point of Entry | | - | 10. Demeanor of Suspect | | F | |
| 4. Method of Entry | | - | 11. Evidence Obtained | | - | | |
| 5. Method of Attack (Person) | | - | 12. Place of Offense | | C | | |
| 6. Method of Attack (Property) | | - | 13. Solvability Factors | | A | | |
| 66. Reporting Officer: No. 73 Name N. ALLEN | | 67. Division PATROL | | 68. Reviewing Supervisor: No. 44 Name [Signature] | | 69. Date of Status 11/06/05 | |
| 70. Follow-Up Officer: No. Name | | 71. Date/Time Assigned | | 72. Attachments <input type="checkbox"/> Narrative <input type="checkbox"/> Other <input type="checkbox"/> Offense Form II <input checked="" type="checkbox"/> Custody Form (Describe) | | | |